111-412

TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

No. ~~902.~~ 587

ALFRED SLIDELL, NICHOLAS H. RIGHTOR, ET AL., APPELLANTS,

vs.

GEORGE H. GRANDJEAN, UNITED STATES DEPUTY SURVEYOR.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE EASTERN DISTRICT OF LOUISIANA.

FILED AUGUST 16, 1883.

SUPREME COURT OF THE UNITED STATES.

No. 902.

ALFRED SLIDELL, NICHOLAS H. RIGHTOR, ET AL., APPELLANTS,

vs.

GEORGE H. GRANDJEAN, UNITED STATES DEPUTY SURVEYOR.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE EASTERN DISTRICT OF LOUISIANA.

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a UNITED STATES OF AMERICA:

Circuit court of the United States for the fifth judicial circuit and eastern district of Louisiana.

ALFRED SLIDELL ET ALS.
vs.
GEORGE H. GRANDJEAN, U. S. DEPUTY SURVEYOR. } No. 9483.

James L. Bradford, esq., solicitor for Alfred Slidell et als, complainants, appellants; Albert H. Leonard, esq., U. S. att'y for George H. Grandjean, respondent, appellee.

Appeal returnable in the Supreme Court of the United States on the second Monday of October, A. D. 1882.

1 UNITED STATES OF AMERICA:

Circuit court of the United States for the fifth judicial circuit & eastern district of Louisiana.

Bill of complaint & Exhibit A.—Filed June 7th, 1881.

ALFRED SLIDELL ET ALS.
vs.
GEORGE H. GRANDJEAN, UNITED STATES DEPUTY SURVEYOR. } In equity. No. 9483.

To the judges of the circuit court of the United States for the eastern district of Louisiana, in the fifth circuit:

Your orators, Alfred Slidell, residing in Paris, in the Republic of France, a citizen of said republic; John Burnside, of New Orleans, in the State of Louisiana, a subject of the Queen of Great Britain; Duncan F. Kenner, of New Orleans, in the State of Louisiana, a citizen of said State; David D. Withers, of New York, in the State of New York, a citizen of said State; Nicholas H. Rightor, of New Orleans, in the State of Louisiana, a citizen of said State; Robert Lawes, of the parish of Assumption, in the State of Louisiana, a citizen of said State; Marguerite Mathilde Slidell, wife of the Baron Emile d'Erlanger, residing in Paris, in the Republic of France, and a citizen of said republic, herein joined and authorized by her said husband; Marie Rosine Slidell, wife of Etienne Pierre Jacques Henri de Serres, Count de Saint Roman, residing in Paris, in the Republic of France, and a citizen of said republic, herein joined and authorized by her said husband; Marie Marguerite Caroline Slidell, wife of Jacob Antoine Henry Leodegar Charles Louis Phyffer de Heydegg, residing in Lucerne, in the Republic of Switzerland, and a citizen of said republic, herein joined and authorized by her said husband; Henry Clement Millaudon, of the parish of Pointe Coupee, in the State of Louisiana, a citizen of said State; Benjamin L. Millaudon, of the parish of St. Bernard, in the State of Louisiana, a citizen of staid State; Jeanne Henrietta Millaudon, wife of Charles C. Gardanne, residing with her said husband

in New Orleans, in the State of Louisiana and a citizen of said State, herein joined and authorized by her said husband; Charles Casimer Gardanne, of New Orleans, in the State of Louisiana, and a citizen of said State; Laurent André Burthe, residing in New Orleans, in the State of Louisiana, and a citizen of said State; Josephine Pagés, widow of Emanuel Burthe, residing in Liberty, in the State of Virginia, a citizen of said State, tutrix of and herein suing in behalf of the minors, Estelle and Laurent André, issue of her marriage with the said Emanuel Burthe, deceased; Thomas Butler, of the parish of West Feliciana, in the State of Louisiana, and a citizen of said State, tutor for and herein suing in behalf of the minors, Louise, Robert, Edward, and Marguerite, issue of the marriage of Marie Marguerite Burthe, deceased, with Robert O. Butler, deceased; Genevieve Millaudon, wife of and herein joined and authorized by her husband, George Edmond Brown, residing with him at Breaux Bridge in the parish of St. Martins, in the State of Louisiana, and a citizen of said State; Louise Burthe, widow of Dominique F. Edmond Burthe, deceased, in her own right and as tutrix of and herein suing in behalf of the minors, Madeline, Elodie, Gabrielle, Edmond, and Cecile, issued of her marriage with the said Dominique F. E. Burthe, deceased, residing in New Orleans, in the State of Louisiana, and a citizen of said State; Nicholas B. Trist, residing in New Orleans, in the State of Louisiana, and a citizen of said State; Nanine Bringier, wife of and herein joined and authorized by her husband, Duncan F. Kenner, residing with her said husband in New Orleans, in the State of Louisiana, a citizen of said State; Aglaé Bringier, wife of and herein joined and authorized by her husband, Benjamin Tureaud, residing with him in the parish of Ascension, in the State of Louisiana, and a citizen of said State; Louiza Bringier, wife of and herein joined and authorized by her husband, Martin Gordon, jr., residing with him in New Orleans, Louisiana, and a citizen of said State; Marius S. Bringier, of New Orleans, in the State of Louisiana, a citizen of said State; Octavie Bringier, wife of and herein joined and authorized by her husband Allen Thomas, residing with her said husband in Baton Rouge, in the parish of East Baton Rouge, in the State of Louisiana, and a citizen of said State; Martin Duradon Bringier, residing in New Orleans, in the State of Louisiana, and a citizen of said State, herein suing in his own right and as tutor of the minor, Myrthé Taylor; Louise Taylor, residing in New Orleans, in the State of Louisiana, and a citizen of said State; Bettie Taylor, wife of and herein joined and authorized by her husband, Walter Stauffer, residing with her said husband in New Orleans, in the State of Louisiana, and a citizen of said State; Nicholas P. Trist, residing in the parish of St. James, in the State of Louisiana, and a citizen of said State; Wilhelmine Trist, wife of and herein joined and authorized by her husband Robert C. Wood, residing with him in New Orleans, in the State of Louisiana, and a citizen of said State, bring this their bill against George H. Grandjean, a deputy of Orlando H. Brewster, United States surveyor-general for the State of Louisiana, a citizen of said State, and residing in the parish of Livingston, in said State, and thereupon your orators complain and say:

2 That in the year 1776, on the 9th day of September, at a time when Spain was in the possession as sovereign of the province of Louisiana, embracing a portion of the present State of Louisiana lying

east of the River Mississippi and south of the Iberville River (now called the Bayou Manchac and the Amite River), and of the lakes Maurepas and Pontchartrain, exercising therein the rights, powers, and attributes of a sovereign and owner of said territory, Maurice Conway, an inhabitant of said territory, at New Orleans, made his certain claim, petition, or demand, addressed to Don Louis y Unzaga Amezaga, then military and political governor of said city of New Orleans and province of Louisiana, praying said governor to grant him all the back lands particularly set forth and described in said petition, as by the said petition when produced will appear, and that he would appoint Lewis Andry to place him, the said Maurice Conway, in possession of said land, and to survey the same and fix the boundaries thereof, and to do further acts and things usual and needful in the premises.

That afterwards, to wit, on the 27th of said month of September, 1776, the said political and military governor made his order directing the said Lewis Andry to go to the land applied for, and to place the applicant, said Maurice Conway, in possession of the same, if vacant, and if no injury would result to any of the adjoining inhabitants; to establish the boundaries of said land and to make to him, the said governor, a proces verbal or return of his proceedings, in order that he might issue to the said Maurice Conway a complete title for the land so petitioned for and surveyed, as by the said order of said governor, when produced, will appear.

That afterwards, to wit, on the first day of October, 1776, or thereabouts, the said Lewis Andry proceeded to the land described in the said petition of the said Maurice Conway and in the order of the said governor, and there in obedience to said order, and as prayed for in said petition, did survey and establish the boundaries of said land, and did place the petitioner, the said Maurice Conway, in possession of the same, and did grant and make his certificate, or proces verbal of his proceedings, signed by him and by the said Maurice Conway and Don Louis Judice, then commandante of the district of Lafourche, which proces verbal of his said proceedings he afterwards returned to the said military and political governor; all of which by the said proces verbal, when produced, will appear.

That afterwards, to wit, on the 21st day of the month of June, in the year 1777, Don Bernardo De Galvez, then governor ad interim and intendant of said province of Louisiana, made and delivered to the said Maurice Conway his complete grant, in the name and by the authority of the King of Spain, of the land so surveyed, and whose boundaries had been by the said Lewis Andry established as aforesaid, and of which the possession had been given to the said Maurice Conway; the said grant vesting in the said Conway an estate of inheritance and fee-simple in all the lands therein described, without condition or reservation, and without requiring any other act or thing to be done by the said Conway or other person before the full, final, and complete vesting in him of said estate of inheritance and fee-simple in said lands; all of which by the said instrument of grant, when produced, will appear.

That by the survey of the boundaries of said land by the said Louis Andry it appeared that the same was situated on the left bank of the Mississippi River in descending the same, about 24 leagues above the town of New Orleans, in the then district of Lafourche, with a front on said stream of 96 lineal arpents, and that the upper side line extended from

said river into the interior of the country on a compass direction of north 50° west, the lower side line in like manner extending from the said river into the interior of the country on a compass direction of north 70° east, and both of said side lines diverging, in consequence, towards the rear, with an angle of 120° between the same; and that said side lines were not actually run out, measured, and marked, upon the ground further into the interior than the distance of 42 lineal arpents from said river, where posts or bournes were set by said Andry, which, with similar posts or bournes, also set by him on each of said side lines near the said river, would serve to fix the course of said lines into the interior whenever it might suit the convenience or interests of said Maurice Conway so to extend the same. That all this was done in conformity with the usages and customs and under the circumstances of necessity of said province, and was not intended in any manner to limit or control the extent of the said lands to the rear and into the interior, but, on the contrary, to give to the same an extent towards the rear and into the interior, upon the prolongation of the said side lines, as far as the jurisdiction and power of said governor to grant the domain lands extended.

That at the times when the foregoing proceedings took place, and immediately before and after the same, the territorial limits of said province of Louisiana, in that vicinity, extended northward to the water boundary formed by the Iberville River and the chain of lakes and their connections, now known as Lake Maurepas, Lake Ponchartrain, and Lake Borgne, the said Iberville River, as then known, being the connecting link or arm between the Mississippi River and the lake Maurepas, now known as Pass or Bayou Manchac and Amite River; that therefore the said grant of land so made by the authorities of Spain in said province to the said Maurice Conway extended, and was so intended to extend, along the Mississippi River, with a front thereon, as stated, of 96 lineal arpents, or about 3½ miles, and in depth between the side lines, as heretofore described, from the said river to the said Iberville River and the said Lake Maurepas.

And your orators further show that under and by virtue of said petition made by the said Maurice Conway to said military and political governor Don Louis Unzaga y Amezaga, and said order to survey said land and place the petitioner in possession thereof, and the survey and putting into possession thereof by said Andry, and the said proces verbal or return made by said Andry to the said governor ad interim, showing all he had done in the premises, and especially under and by virtue of said grant or complete title made by the said governor ad interim on said 21st day of June, 1777, the said Maurice Conway became vested, under the laws, usages, and customs then in force in the said province of Louisiana, of an estate of inheritance and fee-simple in the lands described in said instruments of title absolutely and without condition, with full right and authority to use and enjoy the same as his property.

That by the third article of the treaty between Spain and France concluded at Saint Il Defonso on the first of October, 1800, the former sovereign ceded to the latter the province of Louisiana, with limits embracing the lands granted to Maurice Conway as aforesaid, and by the first article of the treaty between the Republic of France and the United States, concluded at Paris on the 30th of April, 1803, the said province, with the same limits, was ceded to the United States, who took possession of the

portion of the same embracing the now State of Louisiana, at New Orleans, on the 20th of December, 1803.

That under an act of Congress approved on the 31st October, 1803, the President of the United States appointed Wm. C. C. Claiborne to be military and political governor of said province, and while he was in the exercise of his powers and duties as such, Wm. Donaldson addressed to him a petition setting forth the grant of land to Maurice Conway, as heretofore set forth by your orators, and that the same then belonged to him, the petitioner, Wm. Marenner, and Patrick Conway; that they were desirous that the whole grant should be surveyed and its lines marked, in order to avoid any interference with the proprietors of neighboring grants and expensive disputes, et cetera; and praying that said governor would
3 permit the said William Marenner, or some other fit person, to survey the said tract and mark the boundaries thereof, and that the surveyor should be protected by the military power of the province while making said survey, as will from said petition, when produced, more fully appear.

That the said governor thereupon authorized said survey of said grant and directed the commandant of the district to extend to the surveyor his protection if necessary; as will from the said instrument of license or permit, when produced, more fully appear.

That in pursuance of said license or order the whole of said grant was surveyed and its outboundaries determined and marked upon the ground, the upper side line thereof being extended to the Bayou Manchac, or ancient Iberville River, in the course of the first 42 arpents thereof, as surveyed by Don Louis Andry, in the year 1776; and the lower side line in like manner extended to the Lake Maurepas, in the course of its first 42 arpents as likewise surveyed by said Andry in said year 1776; that said grant or tract of land having then passed, by certain sales and other lawful modes of transfer, from said grantee, Maurice Conway, to divers persons, the same was, under the said order or license of said Governor William C. C. Claiborne, further divided and surveyed into three distinct and separate parcels, with different fronts or extents on said Mississippi River, and all of them extending into the rear or interior, respectively, to the Bayou Manchac, Iberville River, and Lake Maurepas.

That, on the 20th of February, 1806, the said Lafon made his certain plat and certificate of survey, testifying that he had, together with one Andry, both acting under said license or order of said Governor Claiborne, in the month of December, 1803, or the month of March, 1804, surveyed in favor of one William Conway the lower portion of said grant, being 27 arpents thereof, front, on the Missisippi River, and extending, by diverging side lines, to the Amite River and the Lake Maurepas; and that the upper side line extended from said Mississippi River, on a course N. 9° 15′ E. to the said Amite River, the distance of 351 lineal arpents, and the lower side line from the said Mississippi River on a course N. 70° 00′ E. to the said Lake Maurepas the distance of 455 lineal arpents; all of which will the more fully by said plat and certificate, when produced, appear.

And your orators further show that, on the 2d of March, 1805, an act of Congress was approved entitled "An act for ascertaining and adjusting the titles and claims to land within the Territory of Orleans and the district of Louisiana," under the provision of which a board of commis-

sioners was in due time organized in said Territory of Orleans, which embraced the lands heretofore described, with power to receive notices of claims, and the evidence in support thereof, to lands within said Territory, to inquire into, examine, and investigate the same, and to decide thereupon according to justice and equity; that, under the 4th section of the said act, persons claiming lands by virtue of any complete and perfected grant made before the 1st of October, 1800, were allowed, if they saw fit, and persons claiming lands under imperfect or incomplete grants were required, to file before the register of the proper district, before the 1st day of March, 1806, notices in writing, stating the nature and extent of their claims, together with plats of the lands so claimed, and before that day to deliver to said register, for the purpose of being recorded, every grant, order of survey, deed, conveyance, or other written evidence of their said claims.

That in order to enforce obedience to this act, and to induce the inhabitants to exhibit and record their said claims and evidence in support thereof, the 4th section of said act denounced certain penalties and forfeitures against said inhabitants in case of failure so to present their claims and evidence; That by the 5th section thereof, it was made the duty of the said board of commissioners, through their clerk, to prepare two transcripts from the books in which all their decisions were directed to be entered of the favorable decisions upon claims, one of which transcripts was to be filed with the officer exercising in the district the authority of surveyor-general, and the other to be sent to the Secretary of the Treasury, to be by him submitted to Congress for its determination thereon, at their next ensuing meeting after he should have received the same; and said act authorized a majority of said board of commissioners to make favorable decisions upon claims filed before them, and provided that said board should consist of three persons, by reason of which your orators aver that any two were authorized to make said favorable decisions.

And your orators further show that, on or about the 28th day of February, 1806, William Conway filed his notice of claim, as owner under certain conveyances from Maurice Conway, before the said board of commissioners, with the evidence in support thereof, to a tract of land, being a portion of that granted by Spain to Maurice Conway on the 21st June, 1777, having a front on the Mississippi River of 22½ arpents, the upper side line running N. 9° 15′ E. 351 lineal arpents, and the lower side line running N. 70° E. 455 lineal arpents, and both opening or diverging towards the rear 60°, bounded above by lands of Daniel Clark, and below by lands of Simon Laneau; as will, by said notice of claim and plat and other evidence in support thereof, when produced, more fully appear.

That said board of commissioners took said claim into consideration, and on or about the 3d day of March, 1806, made their favorable decision thereon, which is known as favorable decision No. 125 in their abstract of favorable decisions, and is in the words and figures following, to wit:

"No. 125.—William Conway claims a tract of land situated in the county of Acadia, at a place called Houmas, on the left bank of the Mississippi, containing 22½ arpents in front, with an opening towards the rear of 60° 45′, the upper line running north, 9° 15′ east, 351 arpents, and the lower line directed north, 70° east, and measuring 457 arpents, bounded on the upper side by Daniel Clark's land, and on the lower by the land of Simon Laneau.

"It appearing to the board, from a patent or complete title exhibited, that 17 arpents of front were, together with a greater quantity, granted by the Spanish Government to Maurice Conway, 21st June, 1777; and it appearing that the 5½ arpents of front remaining of the land aforesaid were purchased by Pierre Part, at the public sale of the estate of the late Joachim Miro (alias Belony), on the 7th day of December, 1788; and it further appearing to the board, from the several instruments of conveyance offered in testimony, that the two tracts of land aforesaid have been conveyed to the present claimant, the board do hereby confirm his claim aforesaid."

That said decision recognized the said grant made to said Maurice Conway as a complete and perfect grant, obligatory and binding upon the United States, as the successor of France and Spain in the province of Louisiana, under the Treaty of Paris aforesaid, which decision being that of a special tribunal upon a subject-matter within its jurisdiction, was subject to no appeal, reversal, or modification whatsoever, save by the final action of Congress thereon; that, by the 5th section of said act of Congress of March 2, 1805, said decision was directed to be laid before Congress for its final action thereon, which was done by the Secretary of the Treasury on the 9th day of January, 1812, with a large number of other favorable decisions on land claims rendered by the commissioners aforesaid.

That, under the 2d and 3d articles of the treaty of 30th of April, 1803, whereby the United States acquired the province of Louisiana, the Constitution and laws of the United States and the principles of equity and justice, it was forbidden to the United States to sell or dispose of, save by the law of the land, pending the decision of the Congress thereon, lands embraced in the favorable decisions aforesaid.

4 That in full recognition of this want of authority and of the obligation under the treaty aforesaid to protect the inhabitants in the enjoyment of their property, an act of Congress was approved on the 3d day of March, 1811, providing for the survey and sale of the public lands generally in the Territory of Orleans, then embracing the grant made to Maurice Conway, whose sixth section contained this pledge: "And provided, also, that till after the final decision of Congress thereon, no tract of land shall be offered for sale the claim to which has been, in due time and according to law, presented to the register of the land office and filed in his office, for the purpose of being investigated by the commissioners appointed for the purpose of ascertaining the rights of persons claiming lands in the Territory of Orleans, or which shall have been located by or for Major General La Fayette, according to law"; that the claim of William Conway having been so presented to the commissioners for the eastern district of the said Territory of Orleans, and having been decided favorably by said commissioners, the lands so claimed were beyond the lawful power of sale or disposition, save by the laws of the land, either by Congress or any officer or authority acting under its direction, and that this absolute want and absence of all authority so to dispose of said lands, or any part thereof, continued without alteration until the full and final action by the said Congress upon the said claim.

That by an act of Congress approved the 18th April, 1814, entitled "An act concerning certificates of confirmation of claims to lands in the State of Louisiana," the final action of Congress upon said favorable de-

cision of said board of commissioners upon said claim of William Conway was probably pronounced, ratifying and approving the same, and providing means and measures for the granting a patent for the same under the laws of the United States.

And your orators further show that on or about the same time when the said William Conway presented to the said board of commissioners his own claim for a portion of said grant to Maurice Conway, being 22½ arpents front thereof, and being the lower portion of said grant on the river Mississippi, Daniel Clark also presented his claim before said commissioners for another portion of said grant, having 20 arpents of front on said river, and being immediately above the said 22½ arpents of said William Conway, and that William Donaldson and John W. Scott jointly presented their claim toanother portion of said grant, containing 29 arpents in front on the same river, and being the uppermost part of said grant on said river; and that about the same time that said commissioners made their favorable decision on said claim of William Conway they in like manner rendered favorable decisions upon the said claims, respectively, of the said Daniel Clark and of the said Donaldson and Scott.

That in due time the surveying department of the Government of the United States was organized in the State of Louisiana, which State had been admitted into the Union with limits embracing the lands granted to Maurice Conway, and on the 14th of January, 1829, at Washington, Mississippi, James P. Turner, then surveyor of the public lands south of Tennessee, exercising in Louisiana the powers and duties of surveyor-general therein, wrote to his immediate superior in office, George Graham, the Commissioner of the General Land Office, telling how he thought the Houmas claim should be surveyed, and asking instructions in the matter, the said grant to Maurice Conway being then and since generally called the Houmas claim or Houmas grant.

That on the 17th of February, 1829, the said George Graham wrote to the said Turner, telling him, for reasons stated, to survey the grant in such a manner as to give it a depth extending out from the Mississippi River equal to a league and a half only, and not to survey it as extending to the depths claimed for the different subdivisions thereof before the board of commissioners and according to the favorable decisions of said commissioners as heretofore set forth; all of which by the said letters of the said James P. Turner and of the said George Graham, when produced, will appear.

That, accordingly, the said James P. Turner surveyed, or caused to be surveyed by his lawful deputies, the said subdivisions of said Houmas claim, as directed by the said Commissioner of the General Land Office, which survey adopted and perpetuated for distances of 120 arpents from the Mississippi River the upper and lower side lines of the grant to Maurice Conway as they have been run and established by Louis Andry in 1776, to the distance of 42 arpents, and by Lafon, Andry, and Maraner in 1803, 1804, and 1805 to the Amite River and Lake Maurepas respectively. And the side lines having been so terminated at 120 lineal arpents from the river, instead of a league and a half, as directed by said George Graham, which are equal to 126 arpents, the difference being six lineal arpents, or nearly a quarter of a mile, the rear line corresponding to that depth, was surveyed and fixed so as to be throughout all its parts 120 ar-

pents distant from the water front, the said Mississippi River. That about the same time the said Turner, or his deputies, also surveyed and fixed another back line to the three divisions or parts of the said grant to Maurice Conway by running a waving line parallel to and 42 arpents from the Mississippi River, uniting the corners or posts set by Andry in 1776 on the side lines, which, as has been shown, were set by him at said distance of 42 lineal arpents. That by these operations the officers of the surveying department admitted and recognized the titles of the said William Conway, Daniel Clark, and Donaldson and Scott as legal representatives of the Spanish grantee, Maurice Conway, only to the extent of 42 arpents in depth from the Mississippi River, and the residue of said grant, lying back of and in the rear of said 42 arpent line, and between it and the Amite River and the Lake Maurepas, was held and claimed as public land of the United States, acquired as vacant land under the first article of the treaty of Paris of the 30th of April, 1803; the portion thereof situate between said 42 arpent line and said league and a half line being reserved by said officers from further immediate survey as debatable ground, upon which the rights of the claimants or the United States might finally attach and operate according to the decision of the courts, which tribunals, as stated by the said George Graham in his instructions to the said Turner of 17th February, 1829, were alone competent to decide the question whether said land was private property or public land.

That from that time to the present time the United States have maintained, and from time to time asserted, by sales, pre-emption entries, grants to the State of Louisiana, and other hostile pretentions, their rights as proprietors, under the treaty aforesaid, to all of the land within the Houmas grant, as heretofore described, lying behind and back of the line surveyed under the authority aforesaid, at the distance of 42 lineal arpents from the Mississippi River. That soon after the instructions of the Commissioner of the General Land Office to the surveyor-general, Turner, above referred to, nearly the whole of the lands in the said Houmas grant situated back of the league and a half line were surveyed by the United States as public lands of the same and divided into townships, ranges, and sections, under their system provided for the rectangular surveys of their public domain. That all of said back land situate in the divisions of said claim, known as the Daniel Clark and the Donaldson and Scott divisions, were so surveyed and divided into sections, townships, and ranges about the years 1829 and 1830, and a very large part of said lands situated in the William Conway claim was about the same time, and has been within the last three years, so surveyed into sections, townships, and ranges.

The whole of which will more conveniently appear and be explained by the accompanying map of said William Conway's claim and its connections, herewith filed as an exhibit to this bill and marked Exhibit A.

That many thousands of acres of the said back land in the said Clark and Donaldson and Scott divisions of said grant having been sold before and during the year 1836, and it appearing that the whole of said land of any value would soon be so disposed of by the United States, J. S. Preston, an owner of a part of said lands, appealed to R. C. Nicholas, then a member of the United States Senate from Louisiana, to induce the United States to desist from such actions on the part of its officers, who, on

the 16th June, 1836, wrote to Ethan A. Brown, then Commissioner of the General Land Office, enclosing to him the letter of the said J. S. Preston; that on the following day, to wit, the 17th June, 1836, the said Commissioner wrote the said Senator R. C. Nicholas, admitting that the sales complained of were illegal and made in violation of law, being of lands embraced in a private claim filed before the commissioners for investigation and not then finally acted on by Congress, and saying he had directed the land office's at New Orleans to cease said sales, and to tell him what lands had been sold, in order that patents for the same might not be issued. That accordingly the said Ethen A. Brown, Commissioner as aforesaid, wrote to the register at New Orleans on said 17th June, 1836, telling him that although he could not recognize the Houmas claim as valid to the whole extent claimed before the board of commissioners, yet, as the law had prohibited the sale of any land so claimed pending final action by Congress upon the claim thereto, the sales already made in the claimed limits of the Houmas grant were illegal, and that no further sales should be allowed, as all of which will, when said letters are produced, more fully appear.

That on the 2d day of December, 1837, M. Birchard, then solicitor of the General Land Office, to whom the Commissioner thereof had referred, for his opinion and report, certain papers relating to the Houmas grant, made his written report to said Commissioner, James Whitcomb, in which he reviewed at great length the facts and law of the same, and gave an equivocal opinion on the same, and hostile thereto, recommending that said Commissioner should refer the whole matter to Congress for decision. That the said Commissioner, on the 3d of April, 1839, wrote to his superior, Levi Woodbury, Secretary of the Treasury, stating the number of sales made in the Houmas claim, the controversy between the claimants thereunder and the settlers who had made purchases of said lands, submitting to him a copy of the solicitor's opinion of December 2, 1837, aforesaid, and asking his instructions, or those of the Attorney-General, what he should do in the premises. That said Secretary of the Treasury referred the matter to the Attorney-General, who, on the 6th of May, 1839, advised him "that Congress alone possessed the power to make a fair and just disposition of the subject in controversy; that much public mischief might arise should the executive branch of the government proceed to act at that time, and that Congress should be applied to at an early day in the next session to take such measures as justice to the respective parties might demand."

That the matter was laid before Congress at its next session, but that body took no action thereon at such session, and consequently the Commissioner of the General Land Office, on the 3d October, 1840, again applied to the Secretary of the Treasury for instructions, setting forth the absolute necessity of some action, but suggesting, as but a short time would elapse before another meeting of Congress, if it would not be better to defer action until that body would have another opportunity to legislate upon the subject. That said Secretary wrote said Commissioner on October 31, 1840, concurring in his opinion that nothing should be done until Congress should have further opportunity for legislative action.

That in this state of uncertainty and indecision on the part of the executive officers of the government the then proprietors of the Houmas claim determined to apply to the United States to issue patents upon the three subdivisions of the same.

That accordingly, some time before the 13th February, 1841, A. F. Rightor, at New Orleans, having a large interest in the William Conway claim, made application to J. Genois, register of the United States land office there, and whose duty it was, under the law applicable to such cases, to issue such instruments of title, for his patent certificate on said claim, and also for such certificate on each of the two other claims composing the said Houmas grant, viz, that of Daniel Clark and that of Donaldson and Scott. That said register declined to issue any of said certificates, and, on said 13th February, 1841, wrote to James Whitcomb, then the Commissioner of the General Land Office, Washington City, laying before him the facts of the said application and his reasons for declining the certificates, and asking that he be instructed how to proceed.

That on the 30th June, 1841, the said Commissioner instructed the said register to defer action until definitely instructed on the subject by the department.

That on the 6th May, 1836, the surveyor-general of Louisiana had approved a patent or particular plat of the claim of William Conway, made in pursuance of a survey thereof under the authority of the United States, and which recognized said claim as laid before the commissioners in 1806, extending to the Amite River and the Lake Maurepas, and it is believed by your orators that such plat was filed before the register by the said A. F. Rightor when he demanded a patent certificate upon said claim of William Conway aforesaid.

That on the 9th of August, 1841, at Washington City, Isaac T. Preston, acting for the parties in interest, addressed a letter to the Commissioner of the General Land Office, in which, after stating the facts and the law of the Wm. Conway claim, he made application for a patent thereon by virtue of the confirmation of said claim by the act of 18th April, 1814, aforesaid, in which application he reminded said Commissioner of the great injustice which had been visited upon the two claims of Daniel Clark and Donaldson and Scott by the sale of the lands embraced by the same, and prayed that the said patent might issue upon said Conway claim before sales had been made therein and controversies and conflictions of interest should be produced thereby.

That the foregoing application by the said Preston for a patent on the said claim of William Conway it seems was referred by said Commissioner, with voluminous documents accompanying the same, to Charles Hopkins, then solicitor of the General Land Office, who took the same under consideration, and, on the 30th September, 1841, wrote an able report to E. M. Huntington, then Commissioner of the General Land Office, in which he advised the said claim had been confirmed by the act of 18th April, 1814, to the whole extent claimed before the commissioners, and that a patent should issue accordingly.

That the said report of said solicitor, with a large number of documents, maps, et cetera, relating to the subject, together with a statement of all that had been done in and about the premises by Congress and the executive officers of the United States, was, by letter of the 14th February, 1842, from the Commissioner of the General Land Office, E. M. Huntington, submitted to Walter Forward, then Secretary of the Treasury, with the request that said officer would submit the subject to the Attorney-General, and afterward instruct him, the said Commissioner, upon certain proposi-

tions of law therein stated, adding that the decision sought would also determine executive action upon the other two branches of the Houmas grant, meaning the claim of Daniel Clark and the claim of Donaldson and Scott.

That before any opinion of the Attorney-General was given the Secretary of the Treasury, on the 2d August, 1842, returned the papers to the successor of said Commissioner, Thomas H. Blake, for a statement of facts, and that by letter of 9th August, 1842, said Blake wrote Mr. C. Young, then Secretary of the Treasury, giving at length the statement of facts called for. That these being submitted by the said Secretary to the Attorney-General, that officer, on the 16th August, 1842, wrote to the
6 said Commissioner, propounding certain questions relating to the practice of the General Land Office in issuing patents on claims, and that on the said 16th August said Commissioner wrote the said Attorney-General, giving the information required.

That on the 2d September, 1842, the Attorney-General wrote the Secretary of the Treasury that there could be no doubt all the sales of land within the claimed limits of the Houmas grant were null and void ab initio, as made in violation of the sixth section of the act of March 3, 1811, advising that no more patents be issued on said sales, and that as to those already issued the remedy was with the courts. The said officer did not then or afterwards express his opinion upon the other points submitted to him, especially the point whether or not said claim had been confirmed by the act of 18th April, 1814.

That on the 7th October, 1842, the said Commissioner of the General Land Office wrote to the surveyor-general of Louisiana telling him he was not authorized, by approving a survey of the William Conway claim, to decide upon its extent or boundaries, until those matters had been decided by the proper authorities; that such claim was before the Attorney-General, and that until he decided it the said surveyor-general had no authority to proceed in the premises.

That on the 30th January, 1843, the register at New Orleans issued his patent certificates on the claim of Daniel Clark and the claim of Donaldson and Scott, testifying that said claims had been confirmed by the act of 18th April, 1814, and that the interested parties were entitled to patents from the United States in the names of the said confirmees.

That on the 10th February, 1843, the Commissioner of the General Land Office wrote to the said register rebuking him for issuing said muniments of title and directing him to recall the same, saying that the whole question as to the confirmation and limits of the Houmas title had been submitted to the supervisory power and had not then been definitely settled.

That on the 15th November, 1843, the Secretary of the Treasury wrote to Samuel D. King, an attorney for parties then owning portions of the Houmas grant, declaring that he had not determined nor would he determine to what extent the said grant had been confirmed, and informing the said King that that question was for the courts of law or for Congress to decide; and on the 1st March, 1844, the Commissioner of the General Land Office wrote to William R. King, a member of the United States Senate, telling him that the executive officers had uniformly declined to issue patents upon any of the portions of the Houmas claim and would continue to refuse so to do until Congress or the courts should settle the fact and extent of the confirmation of said portions.

That on the 28th May, 1844, W. C. Johnson, at Washington City, therein acting as attorney for owners of the two divisions of the Houmas grant confirmed to Daniel Clark and to Donaldson and Scott, made formal application to the Commissioner of the General Land Office for patents on the same, which said application was on the same day and by the same Commissioner referred to his official superior, the Secretary of the Treasury ad interim, McClintock Young.

And your orators further show:

That finally the Secretary of the Treasury, George M. Bibb, on the 12th August, 1844, wrote to the Commissioner of the General Land Office, Thomas H. Blake, an opinion, in which he revised the whole history of the Houmas land grant and made his final decision thereon, holding that the portions thereof claimed before the land commissioners in 1806 by William Conway, Daniel Clark, and by Donaldson and Scott had been confirmed to them, respectively, by the act of 18th April, 1814, and to the full extent to which said claims were preferred before said commissioners, and that the applications for the patents on said Donaldson and Scott and said Daniel Clark divisions, then before him for decision, ought to be granted and the patents issued.

That on the 22d of August, 1844, the patents of the United States were accordingly issued and delivered for said Daniel Clark and Donaldson and Scott parts of the Houmas grant, thereby terminating all power and authority over said claims on the part of the Executive Department of the Government of the United States.

That on October 24, 1844, the Commissioner of the General Land Office wrote the surveyor general of Louisiana informing him the Secretary of the Treasury had decided the Houmas claims as confirmed and entitled to patents; that patents had issued on two of them, and instructing said officer to prepare and send to the register of the land office at New Orleans a special or patent plat of the unpatented claim, viz, the claim of William Conway; and on the same day the said Commissioner wrote said register informing him of the same facts and proceedings and intimating that it was then lawful and regular for him to issue a patent certificate upon said claim. That accordingly, on the 25th November, 1844, the said surveyor-general certified a patent or special plat of said claim of William Conway in order that said register might issue thereon his patent certificate; whereby it appeared that said claim, or tract of land, as claimed by Wm. Conway in 1806, before the board of commissioners by whom the same had been confirmed under the No. 125, contained the superficial quantity of 123,519.90 acres of land.

And afterwards the said register made and issued his patent certificate in favor of the said William Conway claim, thereby testifying it had been confirmed by the act of 18th April, 1814, and was entitled to a patent according to the plat aforesaid, approved by the said surveyor-general on the 25th November, 1844.

That on the 23d September, 1844, Isaac T. Preston, and on the 19th October, 1844, W. C. Johnson, as agents or attorneys for owners of land within the said William Conway claim, made formal application to the Commissioner of the General Land Office asking that a patent for the same might issue, and your orators know of no reason why such patent would not have issued in due course had not the Congress of the United

States interfered, and by a resolution of the United States Senate passed on the 10th December, 1844, put in issue the power of the executive branch of the government to have issued the patents on the said claims of Daniel Clark and of Donaldson and Scott, and calling upon the Secretary of the Treasury for full reports of all he had done or caused to be done in the premises, with copies of all arguments, decisions, maps, certificates, surveys, entries, et cetera, in any manner applicable to the Houmas controversy. That the practical effect of such action by the Senate of the United States was to deter the executive officers thereof from issuing at that time the patent upon the William Conway claim, through such officers, as has been shown, were satisfied it was their duty to do so, and that it was the right of the parties in interest to receive the same.

That in obedience to the said resolutions of said Senate the Secretary of the Treasury did, on the 8th of January, 1845, write to the President of said Senate sending that body a lengthy report giving the information called for, which report was subsequently printed, and is known as Senate Document, No. 45, of the Second Session of the Twenty-eighth Congress, and contains a great portion of the official letters, decisions, plats, certificates, et cet'ra, heretofore referred to, and constituting in great measure the title of your orators to the lands hereafter to be more particularly described.

That on the 7th January, 1845, a joint resolution was passed by the House of Representatives of the United States, to wit: "Resolved by the Senate and House of Representatives of the United States of America in Congress assembled, that the issuance of grants or other evidences of title upon a Spanish land claim in the State of Louisiana, lying on the Mississippi, above New Orleans, commonly known as the Houmas claim,
7 be, and the same are hereby, prohibited until the further order of Congress in relation thereto." That said resolution failed to pass the Senate for want of time, at that session, but, with the resolutions of said Senate aforesaid of the 10th and 19th December, 1844, it had the effect to induce the Commissioner of the General Land Office thereafter to refuse to issue a patent on the William Conway claim, though specially requested to do so by the President of the United States, as your orators will show.

That on March 3d, 1845, the owners of the Conway claim wrote to the President requesting him to direct the Commissioner of the General Land Office to do his duty and furnish them the proper evidence of their title as the same had been furnished to the owners of the other portions of the Houmas grant, sending the President a note of the same date from the Secretary of Treasury, in which said Secretary stated that the three claims "are confirmed, and therefore patents ought to issue, if not already issued, conformably to the opinion" delivered by him.

That in answer to this request the said President on the same day gave to the applicants an order addressed to the said Commissioner telling him to "issue patents in conformity with the above recommendation and opinion of the Secretary of the Treasury," but the said Commissioner still persisted in his refusal so to do.

That on the 12th May, 1845, Isaac T. Preston, as counsel for the owners of said William Conway claim, again made application for a patent thereon to James Shields, the then Commissioner of the General Land Office, who,

on the 24th June following submitted the same, with a report, to his immediate official superior, Robert J. Walker, Secretary of the Treasury, and asked his instructions in the premises, which instructions the said Secretary failed or declined to give.

That on 26th June, 1846, the Senate and House of Representatives passed a joint resolution in the words and figures following, to wit: "That the Attorney-General of the United States be, and is hereby, directed to examine the evidences of title in the case of a certain Spanish land claim in the State of Louisiana, lying on the Mississippi above New Orleans, commonly known as the Houmas claim, and to report his opinion thereon to the President of the United States; and if, in the opinion of the Attorney General, any patent or patents issued, or which may be issued, under such claim, shall have been or shall be issued contrary to law, that the President of the United States be, and is hereby, requested to cause proceedings to be instituted in behalf of the United States, and to have the validity of such patent or patents judicially determined."

That in compliance with said joint resolution Nathan Clifford, the Attorney-General of the United States, on the 31st December, 1847, sent to the President his opinion and report, in which he reviewed at great length the material facts and the law of the Houmas controversy, concluding and so advising the said President, that the Houmas claim had not been confirmed by any act of Congress; that the patent certificates, patent plats, patents, and other evidences of title issued thereon were utterly null and void, as issued without authority of law, and advising finally that the grant made in 1777 to Maurice Conway was a complete valid grant, protected by the treaty of Paris of the 30th April, 1803, but only to the depth of 42 lineal arpents from the Mississippi River and no more, and that all the lands within the claimed limits of said grant situated farther from said river than 42 lineal arpents, were the public lands of the United States, acquired by them as vacant lands under the treaty aforesaid.

That in due course, and in accordance with the foregoing opinion and report of the said Attorney-General, the President of the United States some time in the year 1849 instructed the attorney of the United States for the district of Louisiana, at New Orleans, to institute suits in this honorable court, and on the equity side thereof, against Daniel Clark or his legal representatives, and Donaldson and Scott or their legal representatives, to have the patents issued to them respectively, on the 22d August, 1844, judicially annulled and cancelled and the lands therein conveyed declared to be the property of the United States unaffected by said patents.

That on the 22d of November, 1856, a decree was rendered in one of the said suits, No. 1814, against said Daniel Clark and others, declaring said patents inoperative as having issued without authority of law, and directing that within thirty days after notice of said decree the defendants should surrender the same for cancellation.

That said notice was never given and has not been given to this day, and said patent remains still outstanding.

That no decree was ever rendered or made in the said suit against Donaldson and Scott, No. 1815, and the same is now at issue and stands ready for argument in this court.

And your orators further show, that on the 2d June, 1858, there was

approved an act of Congress entitled "An act to provide for the location of certain confirmed private land claims in the State of Missouri, and for other purposes," whose second section is in the words and figures following, that is to say:

"That the decisions in favor of land claimants made by P. Grimes, Joshua Lewis, and Thomas B. Robertson, commissioners appointed to adjust private land claims in the eastern district of the Territory of Orleans, communicated to the House of Representatives by the Secretary of the Treasury, on the ninth day of January, one thousand eight hundred and twelve, and which is [are] found in the American State Papers, Public Lands (Duff Green edition), volume two, from page two hundred and twenty-four to three hundred and sixty-seven, inclusive, be, and the same are hereby, confirmed, saving and reserving, however, to all adverse claimants the right to assert the validity of their claims in a court or courts of justice:

"Provided, however, 'That any claim so recommended for confirmation, but which may have been rejected, in whole or in part, by any subsequent board of commissioners be, and the same is hereby, specially excepted from confirmation.'"

That said second section acted upon and was intended to act upon and affirm in all things the decision No. 125 in favor of the claim of William Conway, made on the 3d day of March, 1806, by the board of commissioners for the eastern district of the Territory of Orleans, if the same had not been so affirmed and approved by the act of 18th April, 1814, and that said section recognized in favor of said William Conway, and all persons lawfully deducing title under him, a full, clear, and indefeasible estate, in fee simple, in all and every portion of the lands claimed by said Conway before said commissioners and vested in them all title, claim, right, or interest whatsoever which the United States had or might have or claim by virtue of the treaty of cession by which they acquired the province of Louisiana.

That on the 3d March, 1859, the Congress of the United States passed a joint resolution suspending until the next Congress the said second section of said act of June 2, 1858, and declaring that in the meantime "no patent or patents shall be issued, nor shall any action be had by the executive branch or department of the Government, or any officer or agent thereof, under or by virtue of said section."

That on the 21st June, 1860, there was approved another act of the said Congress, which is in the words and figures following, to wit:

"Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the second section of an act passed the second day of June, one thousand eight hundred and fifty-eight, entitled 'An act to provide for the location of certain
8 confirmed private land claims in the State of Missouri, and for other purposes,' and all other parts of said act which relate to lands in Louisiana, confirmed by said second section (so far as said lands are concerned) be, and the same are hereby, repealed.

"SEC. 2. And be it further enacted, that Congress hereby refuses to confirm to the claimants under the Houmas grant the lands embraced in certificates number one hundred and twenty-five to William Conway, number

one hundred and twenty-seven to Daniel Clark, and number one hundred and thirty-three to Donaldson and Scott."

Now your orators show that said act, in so far as it purports to repeal said second section of said act of June 2d, 1858, and by force of such repeal to revoke and cancel the grant thereby made to or recognized in favor of your orators, or those under whom they deduce their right, was and is an exercise of power by the legislative branch of the Government of the United States totally unwarranted and unauthorized by the Constitution of the United States, and the principles of justice, and was and is utterly null and void. That the title of your orators and those from whom they derive their right stands unaffected in any manner whatsoever by said repealing act, for the same is an attempt to take private property without compensation, without judicial proceedings, for no crime alleged or proved against the lawful owners thereof, and without due course of law.

But now, so it is, may it please your honors, that the said George H. Grandjean, deputy of the said Orlando H. Brewster, surveyor-general of the United States for the State of Louisiana, pretending that all of the land in said William Conway claim situated more than 42 lineal arpents distant from the Mississippi River is the property of the United States and not the property of your orators, is now actually engaged, with a numerous company of chain-carriers, flagmen, axmen, and other assistants, in surveying the same, or a large portion of the same, into sections, townships, ranges, lots, et cetera, according to the system of the public land surveys of the United States, and for this purpose he has entered upon, with his said assistants, and is now encamped upon, the said lands of your orators, back of the 42 arpents from the said river, has opened and marked his lines through the woods, put up corners, and is now engaged in surveying the very lands which have been cultivated as cotton and sugar plantations for a century past, and upon which sugar houses, laborers' quarters, overseers' residences, and a number of other buildings, works, and structures, are situated, and have been so situated time immemorially, and upon which your orators have paid State and parish taxes time immemorially.

That said claim of William Conway, to the depth of 80 arpents from said Mississippi River, had been, at a very early day, divided into three plantations, with narrow fronts upon said stream, the side lines thereof diverging largely towards the rear, and said plantations are now known as the Conway Place, the Orange Grove Place, and the Bringier Place, all of which are now cultivated, and for a great many years have been, as sugar plantations, and are of immense value. That all of these plantations are now cleared and in a high state of cultivation to a distance of 80 arpents from the said river, and the Orange Grove and the Bringier places are cleared and in a high state of cultivation even to a greater distance. That a line drawn through the said plantations, 42 arpents from and parallel with the Mississippi River, would leave outside and in the rear thereof, and upon the lands now being surveyed as public lands of the United States, the sugar houses, laborers' quarters, stables, grain houses, overseers' houses, and many other works, buildings, and improvements belonging to said plantations and used time immemorially in the cultivation thereof, and of immense value to your orators or to some of them.

Now your orators show that the said George H. Granjean pretends or

approved an act of Congress entitled "An act to provide for the location of certain confirmed private land claims in the State of Missouri, and for other purposes," whose second section is in the words and figures following, that is to say:

"That the decisions in favor of land claimants made by P. Grimes, Joshua Lewis, and Thomas B. Robertson, commissioners appointed to adjust private land claims in the eastern district of the Territory of Orleans, communicated to the House of Representatives by the Secretary of the Treasury, on the ninth day of January, one thousand eight hundred and twelve, and which is [are] found in the American State Papers, Public Lands (Duff Green edition), volume two, from page two hundred and twenty-four to three hundred and sixty-seven, inclusive, be, and the same are hereby, confirmed, saving and reserving, however, to all adverse claimants the right to assert the validity of their claims in a court or courts of justice:

"Provided, however, 'That any claim so recommended for confirmation, but which may have been rejected, in whole or in part, by any subsequent board of commissioners be, and the same is hereby, specially excepted from confirmation.'"

That said second section acted upon and was intended to act upon and affirm in all things the decision No. 125 in favor of the claim of William Conway, made on the 3d day of March, 1806, by the board of commissioners for the eastern district of the Territory of Orleans, if the same had not been so affirmed and approved by the act of 18th April, 1814, and that said section recognized in favor of said William Conway, and all persons lawfully deducing title under him, a full, clear, and indefeasible estate, in fee simple, in all and every portion of the lands claimed by said Conway before said commissioners and vested in them all title, claim, right, or interest whatsoever which the United States had or might have or claim by virtue of the treaty of cession by which they acquired the province of Louisiana.

That on the 3d March, 1859, the Congress of the United States passed a joint resolution suspending until the next Congress the said second section of said act of June 2, 1858, and declaring that in the meantime "no patent or patents shall be issued, nor shall any action be had by the executive branch or department of the Government, or any officer or agent thereof, under or by virtue of said section."

That on the 21st June, 1860, there was approved another act of the said Congress, which is in the words and figures following, to wit:

"Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the second section of an act passed the second day of June, one thousand eight hundred and fifty-eight, entitled 'An act to provide for the location of certain
8 confirmed private land claims in the State of Missouri, and for other purposes,' and all other parts of said act which relate to lands in Louisiana, confirmed by said second section (so far as said lands are concerned) be, and the same are hereby, repealed.

"SEC. 2. And be it further enacted, that Congress hereby refuses to confirm to the claimants under the Houmas grant the lands embraced in certificates number one hundred and twenty-five to William Conway, number

one hundred and twenty-seven to Daniel Clark, and number one hundred and thirty-three to Donaldson and Scott."

Now your orators show that said act, in so far as it purports to repeal said second section of said act of June 2d, 1858, and by force of such repeal to revoke and cancel the grant thereby made to or recognized in favor of your orators, or those under whom they deduce their right, was and is an exercise of power by the legislative branch of the Government of the United States totally unwarranted and unauthorized by the Constitution of the United States, and the principles of justice, and was and is utterly null and void. That the title of your orators and those from whom they derive their right stands unaffected in any manner whatsoever by said repealing act, for the same is an attempt to take private property without compensation, without judicial proceedings, for no crime alleged or proved against the lawful owners thereof, and without due course of law.

But now, so it is, may it please your honors, that the said George H. Grandjean, deputy of the said Orlando H. Brewster, surveyor-general of the United States for the State of Louisiana, pretending that all of the land in said William Conway claim situated more than 42 lineal arpents distant from the Mississippi River is the property of the United States and not the property of your orators, is now actually engaged, with a numerous company of chain-carriers, flagmen, axmen, and other assistants, in surveying the same, or a large portion of the same, into sections, townships, ranges, lots, et cetera, according to the system of the public land surveys of the United States, and for this purpose he has entered upon, with his said assistants, and is now encamped upon, the said lands of your orators, back of the 42 arpents from the said river, has opened and marked his lines through the woods, put up corners, and is now engaged in surveying the very lands which have been cultivated as cotton and sugar plantations for a century past, and upon which sugar houses, laborers' quarters, overseers' residences, and a number of other buildings, works, and structures, are situated, and have been so situated time immemorially, and upon which your orators have paid State and parish taxes time immemorially.

That said claim of William Conway, to the depth of 80 arpents from said Mississippi River, had been, at a very early day, divided into three plantations, with narrow fronts upon said stream, the side lines thereof diverging largely towards the rear, and said plantations are now known as the Conway Place, the Orange Grove Place, and the Bringier Place, all of which are now cultivated, and for a great many years have been, as sugar plantations, and are of immense value. That all of these plantations are now cleared and in a high state of cultivation to a distance of 80 arpents from the said river, and the Orange Grove and the Bringier places are cleared and in a high state of cultivation even to a greater distance. That a line drawn through the said plantations, 42 arpents from and parallel with the Mississippi River, would leave outside and in the rear thereof, and upon the lands now being surveyed as public lands of the United States, the sugar houses, laborers' quarters, stables, grain houses, overseers' houses, and many other works, buildings, and improvements belonging to said plantations and used time immemorially in the cultivation thereof, and of immense value to your orators or to some of them.

Now your orators show that the said George H. Granjean pretends or

will pretend that he is doing the acts and things complained of, and which have been done and are being done against the protests and will of your orators by virtue of a contract made on the 3d day of March, 1881, between him and the said O. H. Brewster, acting in that behalf as the agent or surveyor-general in Louisiana of the United States, which contract was approved by the Commissioner of the General Land Office, on the 14th of March, 1881, and under which he will be paid for such surveys, about $700, by the United States.

Also that certain other proceedings, decisions, and rulings made by certain executive officers of said United States justify him in the doing said acts, some of which proceedings, decisions, and rulings your orators believe to be as follows, to wit: A decision made by J. A. Williamson, Commissioner of the General Land Office, at Washington City, on the 22d June, 1877, holding that the claim of William Conway had been confirmed for the whole amount claimed by the act of June 2, 1858, but that said act, or the part thereof confirming said claim, had been repealed by the act of June 21, 1860, leaving said claim to the treaty of 30th April, 1803, for its protection, and that by said treaty it was protected as a perfect Spanish grant to the depth of 80 arpents from the river and no more, and directing the surveyor general of Louisiana to treat the residue thereof as public land of the United States. Another decision rendered on the 4th May, 1878, by Carl Schurz, Secretary of the Interior, modifying the aforesaid decision of said J. A. Williamson, Commissioner, etc., and holding that said claim was valid only to the depth of 42 arpents from the river, adopting the opinion to that effect of the Attorney-General, Nathan Clifford, of 31st December, 1847, heretofore referred to, and which opinion of said Secretary concludes thus: "The lands hereby excluded from said claim will be treated and considered as public land of the United States, and subject to all the rules governing the survey and disposal of the public domain." Another decision or ruling of said Secretary, dated the 9th May, 1878, withholding from disposition for the space of three months the lands in the William Conway claim so held by him to be public lands, in order that your orators or some of them might have time to appeal to the judicial tribunals for the protection of their rights.

Another decision or ruling by the said Secretary, addressed on the 21st June, 1879, to the Commissioner of the General Land Office, directing him to carry into effect his decision of May 4, 1878, so far as it affected the Conway claim. Another decision or ruling of the Commissioner of the General Land Office, addressed on the 8th July, 1879, to the surveyor general at New Orleans, telling him to treat all the land in the William Conway claim, back of 42 arpents from the river, as public land, and to let contracts with his deputies for its survey as such, with general instructions by which to make such surveys.

But your orators aver that none of said decisions, rulings, and proceedings are lawful, or can have any effect whatsoever to legalize the wrongful acts complained of, because the same are only pretended to be justified on the part of their authors by reason of the said act of Congress revoking the grant made to your orators, which act is unconstitutional and hence null and void, and affords no lawful authority to said officers, or any of them, to make and enforce any such proceedings, decisions, and rulings.

And your orators further show, that in furtherance of the foregoing il-

legal decisions and actions of the executive officers of the United States at Washington City, the surveyor-general of Louisiana, on the 31st July, 1879, made and entered into a contract with Owen McLeran, another of his deputy surveyors, for the survey into sections, townships, and ranges, as public lands of the United States, and under their system of public land surveys, of a large quantity of the land in the William Conway claim, being about 20,000 acres thereof, situated on the west side of the Lake Maurepas, and south side of the Amite River, or Bayou Manchac, and that said land was in due course so surveyed and the returns thereof made to the said surveyor-general, who appoved the same in all things, and that the United States paid the account of said surveyor, for said surveys—the said lands so surveyed now being known upon
9 the approved official surveys of said United States, as townships or fractional townships 8 and 9 south, in range 6 east, in the southeastern district of said State of Louisiana, east of the Mississippi River.

That on the 25th September, 1880, the said surveyor-general entered into another contract with John Kap, another one of his deputies, for the survey by him into sections, townships, and ranges, and as public land of the United States, still another very large quantity of the lands in the William Conway claim, amounting to about 100,000 acres of the same, which said surveyor, with a company of assistants is, and has been for several months past, so surveying the same.

And your orators show that the lands in said William Conway claim, back of and more than 42 arpents distance from the Mississippi River, with the improvements upon them, are well worth the sum of $500,000, and that the injury to your orators which will result from the wrongful acts and surveys of the defendant, if unrestrained by this court, will amount to fully $100,000 more.

That the said surveys are being made under and by authority of the executive branch of the United States Government, against the wishes and protests of your orators and with the sole object and fixed purpose on the part of said officers of providing the land office in the city of New Orleans, where said lands, when surveyed, will be subject to disposal, the usual means of describing and disposing of the same according to the United States land system, and that after the returns are made to said office all of the said lands will be disposed of under the land laws of the United States. That already, so far as the said surveys have been completed, the said surveyor-general has caused to be made and has approved in favor of the State of Louisiana, lists of swamp land selections, embracing large quantities of the lands of your orators, thereby, in so far as he can, vesting title to said lands in said State, and this he pretends to do under the authority of an act of Congress, approved the 2d March, 1849, donating the swamp and overflowed lands therein described to said State.

That said United States land office, at New Orleans, and the land office of the State of Louisiana, at New Orleans, have been lately disposing of, and are now disposing of, to all persons who regularly apply for the same, the lands of your orators so surveyed and returned to said offices or either of them.

That these illegal sales and other modes of disposition of the property of your orators have been, are being, and will be, made to large numbers of persons, who, under such pretences of right, have gone and will con-

tinue to go upon the lands of your orators and there cut and remove, or destroy, large and valuable quantities of the timber and wood of your orators, to the very great injury of their lands and discredit of their title.

That these illegal acts and doings of said officers, and the illegal acts, doings, decisions, rulings, surveys, and other hostile proceedings heretofore particularly set forth by your orators, have had the effect and will continue to have the effect, to discredit the title of your orators to all of their lands in said William Conway claim situate more than 42 arpents from the Mississippi River, and to create a multiplicity of lawsuits against trespassers on the same. That already, and for many years past, large numbers of persons, deluded by these acts and doings of the executive officers of the United States, have gone upon said lands and have cut and removed vast quantities of the valuable cypress and other timber therefrom, to the great injury of your orators, who have at all times protested against such wrongs, and have from time to time appealed in vain to the proper authorities of the United States Government to recognize the rights of your orators and to desist from such unwarranted acts, doings, and proceedings.

All which said actions, doings and pretences, are contrary to equity and good conscience and tend to the manifest wrong and injury of your orators in the premises.

In consideration whereof, and forasmuch as your orators can only have adequate relief in the premises in this honorable court, where matters of this nature are properly cognizable and relievable, and cannot have a plain, adequate, or complete remedy at law, and are only relievable in equity, your orators pray:

That an order may now be granted restraining the defendant, George H. Grandjean, as the deputy of Orlando H. Brewster, surveyor-general of the United States in Louisiana, from surveying into sections, townships, and ranges, or in any other mode, and from running and marking lines and putting up corners upon the lands in the said William Conway claim lying back of and behind 42 arpents from the Mississippi River, and from doing any other act or thing under his said contract with the said surveyor-general, upon the said lands, until the further order of this court;

And that it may please your honors and this court to now grant your orators the writ of subpœna issuing out of this court, and under the seal thereof, directed to said George H. Grandjean, as the deputy of said United States surveyor-general for Louisiana, commanding him, by a certain day and under a stated penalty, to appear before this court and answer all the premises aforesaid, and then, after all further proceedings, to abide by such order and decree herein as shall be agreeable to equity and to good conscience and to this court;

And that it may please your honors and this court on such final hearing of this action, to grant to your orators, issuing out of and under the seal of this court, a perpetual writ of injunction, directed to the defendant, as a United States deputy surveyor for the State of Louisiana, commanding and requiring, under the penalties provided by law, that said defendant shall absolutely desist and refrain from proceeding any further under said contract with the said surveyor-general of Louisiana, and from surveying, running, and marking lines and putting up corners upon, or in any manner interfering with, the lands situated in said William Conway

claim and immediately back of a line drawn through the same from the upper to the lower side thereof parallel with and 42 lineal arpents distant from the Mississippi River;

And your orators further pray that they may have such other relief in the premises as shall be agreeable to equity and to good conscience.

(Signed) J. L. BRADFORD,
Solicitor for Complainants.

(Here follows map, marked page 10.)

11 *Affidavit of N. B. Trist.—Filed with bill, June 7th*, 1881.

U. S. circuit court, fifth circuit & eastern district of Louisiana, in equity.

ALFRED SLIDELL ET ALS.
vs.
GEORGE H. GRANDJEAN.

Nicholas B. Trist, being duly sworn, doth depose and say:

That he is one of the complainants in the bill filed in the above-entitled cause, and that some of said complainants reside out of the State of Louisiana, and some within the said State; that he has read the said bill and that he has good reason to believe, and does believe, that the contents thereof are true.

(Signed) N. B. TRIST.

Subscribed and sworn to before me this 4th day of June, A. D. 1881.

[SEAL.] (Signed) WM. H. PASCOE,
Not. Pub.

Affidavit of J. L. Bradford.—Filed with bill, June 7th, 1881.

U. S. circuit court for the 5th circuit & eastern district of Louisiana, in equity.

ALFRED SLIDELL ET AL.
vs.
12 GEORGE H. GRANDJEAN.

James L. Bradford, being duly sworn, doth depose and say, that he is the solicitor and agent of all the complainants in the above and foregoing cause, who are numerous, some residing within the State of Louisiana, and within the jurisdiction of the court aforesaid, and many residing without the same; that the statements and allegations in the bill of complaint filed in said cause are true and correct, and that as to matters of belief and information, he believes the same are true; that said defendant is now engaged in surveying the lands of the complainants as set forth and alleged in said bill, and will in the ordinary course of events complete his said surveys in a few days, and long before the earliest day upon which, under the rules of said court applicable to the case, the subpœna in said bill prayed can be made returnable and the said defendant compelled to enter his appearance. That great injury will result to the said complainants if a restraining or-

der be not granted to restrain the said defendant from finishing
13 said surveys pending the trial of the questions of right and equity in said bill alleged and set forth. That no delay that could have been reasonably avoided is chargeable to said complainants, but that in view of the great number of said complainants, the fact that many live out of the State and some in foreign countries, said bill could not be properly prepared and filed sooner than it has been after the discovery of the wrongful acts of said defendant.

(Signed) J. L. BRADFORD.

Subscribed & sworn to before me this fourth day of June, A. D. 1881.
[SEAL.] (Signed) N. B. TRIST,
Not. Pub.

Order for restraining order.—Entered & filed June 7th, 1881.

U. S. circuit court, 5th circuit & eastern dist. of La., in equity.

ALFBED SLIDELL ET ALS.
vs.
GEORGE H. GRANDJEAN.

Upon reading the bill herein filed, and considering the affidavits thereto annexed, and the same having been duly considered by the court,
14 and it appearing further from said bill and affidavits that there is danger of irreparable injury to the complainants from delay; it is now ordered, adjudged, and decreed that a restraining order be issued, pursuant to the prayer of the bill herein, strictly commanding and enjoining the said defendant, George H. Grandjean, deputy to Orlando H. Brewster, the United States surveyor general of Louisiana, his agents, assistants and employees, under the pains and penalties which may fall upon them, and each of them, in case of disobedience; that they forthwith, and until the further order, judgment, and decree of this court, desist from surveying and running, measuring and marking lines, or putting up posts, corners, and mounds upon the lands in said bill described, being the lands in the William Conway claim or division of the Houmas grant, and lying back and behind a line drawn 42 arpents from and parallel with the Mississippi.

And that they take no further action touching the said lands to
15 the injury of the complainants in said bill until the further order of this court.

That notice of this restraining order be served upon the defendant herein with leave to show cause, if any he can, on Saturday, the 18th day of June, current at 11 o'clock a. m., why the same should not be continued in force until the hearing of said cause, and final decree therein. And it is further ordered that the complainants herein, or one of them, execute a bond in favor of said defendants, conditioned as the law directs, in the sum of $500, with one solvent surety to be approved by the court, and that until said bond is filed, the said restraining order shall not issue.

June 7th, 1881.

(Signed) DON. A. PARDEE, *Judge.*

Bond for restraining order.—Filed June 7th, 1881.

UNITED STATES OF AMERICA:

Know all men by these presents, that we, Nicholas H. Rightor and James L. Bradford, agents for plaintiffs, as principals, and John T.
16 Moore, jr., as surety, are held and firmly bound, jointly and severally, unto F. A. Woolfley, clerk of the circuit court of the U. S. for the 5th circuit and eastern district of Louisiana, in the sum of five hundred dollars, lawful money of the United States of America, to be paid to the said F. A. Woolfley, heirs, executors, administrators and assigns, for which payment, well and truly to be made, we bind ourselves, and and each of us, by himself, and each of our heirs, executors, and administrators, firmly by these presents. Sealed with our seals and dated the 7th day of June, in the year of our Lord eighteen hundred and eighty-one.

Whereas Alfred Slidell and others has this day presented a bill in equity to the honorable the circuit court of the United States for the fifth circuit, holding sessions in and for the eastern district of Louisiana, praying for the issue of a restraining order against George H. Grandjean, a United States deputy surveyor, and defendant in said bill:

Now, the condition of the above obligation is, that we, the above-
17 bounden Nicholas H. Rightor and John T. Moore, jr., & James L. Bradford, will well and truly pay to the said George H. Grandjean, the defendant in said bill, all such damages as he may recover against us in case it should be decided that the said restraining order was wrongfully obtained.

(Signed) N. H. RIGHTOR. [L. S.]
JOHN T. MOORE, JR. [L. S.]
JAMES L. BRADFORD. [L. S.]

Signed, sealed, and delivered in the presence of—
(Signed) JOHN DALY.
J. L. BRADFORD.

UNITED STATES OF AMERICA,
District of Louisiana, ss:

Personally appeared John T. Moore, jr., who, being duly sworn, deposes and says that he is the surety on the within bond; that he resides in the city of New Orleans & State of Louisiana, and is worth the full sum of five hundred dollars over and above all of his debts and liabilities and property exempt from execution.

(Signed) JOHN T. MOORE, JR.

Subscribed & sworn before me this 7th day of June, 1881.
(Signed) F. A. WOOLFLEY,
Commissioner U. S. Circuit Court, District of Louisiana.

18 *Restraining order.—Issued June 7th, 1881.*

UNITED STATES OF AMERICA:

Circuit court of the United States, fifth judicial circuit and eastern district of Louisiana.

ALFRED SLIDELL ET AL.
vs.
GEORGE H. GRANDJEAN. } No. 9483.

The President of the United States to George H. Grandjean, deputy of Orlando H. Brewster, surveyor-general for Louisiana, greeting:

Whereas it has been represented unto us in our said circuit court on the part of Alfred Slidell and others in a bill in equity lately exhibited against you, touching certain matters and things therein set forth; and whereas the honorable Don A. Pardee, one of the judges of our said court, upon due consideration thereof, has made and allowed an order in said cause whereby you are required to show cause, on the 18th day of June, 1881, why an injunction should not issue as prayed for in said bill of
19 complaint; and whereas the said judge has granted and allowed an order restraining you immediately and forthwith and during the pendency of said motion for an injunction to the full extent and effect as prayed for in said bill of complaint:

Now, therefore, in consideration of the premises and of the allegations in said bill contained, you, the said George H. Grandjean, deputy of Orlando H. Brewster, surveyor-general for Louisiana, your agents, attorneys, and servants, and each of you, are hereby commanded and strictly enjoined, under the penalty of the law, that you, and each of you, absolutely refrain and desist from surveying and running, measuring and making, lines or putting up posts, corners, and mounds upon the lands described in complainants' bill of complaint, to wit, the lands in the William Conway claim or division, and lying back of and behind a line drawn 42 arpents from and parallel with the Mississippi River; and that you, the said George H. Grandjean, your agents, attorneys, and servants,
20 and each of you, remain so inhibited and restrained until the further order of our said court in the premises.

Witness the honorable Morrison R. Waite, Chief Justice of the Supreme Court of the United States, this 7th day of June, in the year of our Lord one thousand eight hundred and eighty-one.

[SEAL.] (Signed) F. A. WOOLFLEY, *Clerk*,
By T. V. COUPLAND,
D'y Clerk.

Marshal's return.

Received June 8th, 1881, by the U. S. marshal, and on June 10th, 1881, I served a copy of the within restraining order on George H. Grandjean, a deputy of Orlando H. Brewster, surveyor-general for Louisiana, by handing the same to him in person near the town of Donaldsonville, about 70 miles from New Orleans.

(Signed) E. S. CURRY,
D'y U. S. Marshal.

Subpœna in chancery to George H. Granjean, deputy of Orlando
21 *H. Brewster, surveyor-general for Louisiana.—Issued June 7th,* 1881.

UNITED STATES OF AMERICA:

The President of the United States to the marshal for the eastern district of Louisiana, greeting:

You are hereby commanded to summon George H. Grandjean, deputy of Orlando H. Brewster, surveyor-general for Louisiana, to appear before the honorable the judges of the fifth judicial circuit of the United States of America, at a circuit court to be holden on the first Monday of July, 1881, then and there to answer a bill in chancery filed against him, wherein Alfred Slidell et al. are complainants and said George H. Grandjean, deputy of Orlando H. Brewster, surveyor-general for Louisiana, is defendant.

Herein fail not, and have you then and there this writ, with your endorsement thereon how you have executed the same.

Witness the honorable Morrison R. Waite, Chief Justice of the
22 Supreme Court of the United States of America, this 7th day of June, in the year of our Lord one thousand eight hundred and eighty-one, and the one hundred and fifth year of American Independence.

[SEAL.] (Signed) T. V. COUPLAND,
D'y Clerk.

The defendant is hereby notified that he is required to enter his appearance in the clerk's office of the United States circuit court on or before the first Monday of July, 1881; otherwise the bill may be taken pro confesso.

(Signed) T. V. COUPLAND,
D'y Clerk.

Marshal's return.

Received June 8th, 1881, by the U. S. marshal, and on June 10th, 1881, I served a true copy of the within subpœna in chancery on George H. Grandjean, a deputy of Orlando H. Brewster, surveyor-general for Louisiana, by handing the same to him in person in the town of Donaldsonville, about 70 miles from New Orleans.

(Signed) E. S. CURRY,
D'y U. S. Marshal.

23 *Application for injunction continued.—Extract from the minutes, April term,* 1881.

NEW ORLEANS, *Saturday June 18th,* 1881.

Court met pursuant to adjournment; present, Don A. Pardee, circuit judge.

ALFRED SLIDELL ET AL.
vs.
GEORGE H. GRANDJEAN. } No. 9483.

By consent of counsel, the application for injunction herein is continued to 25th inst. at 11 a. m.

Demurrer to complainants' bill.—Filed June 23d, 1881.

Circuit court of the United States for the fifth circuit and eastern district of Louisiana.

The demurrer of George H. Grandjean, United States deputy surveyor, defendant to the bill of complaint of Alfred Slidell and others, complainants, No. 9483 of the docket of this court.

24 The defendant by protestation, not confessing all or any of the matters and things in the said complainants' bill contained to be true in such manner and form as the same are therein set forth and alleged, does demur to the said bill, and for cause of demurrer shows: That it appears on the face of the said bill that this court is without jurisdiction to hear and determine the matters complained of; that the said bill seeks to put at issue and have tried the titles to lands claimed by the United States as belonging to the public domaine of the United States, and of which they are in possession and over which they have always exercised proprietary rights; that it does not appear in and by said bill that the complainants have obtained judgment at law upon their title to the lands claimed by them; that the case made by the bill is virtually and in effect a suit against the United States, and no act of Congress authorizing this court to hear and determine the same is set out or referred to in said bill. The 25 said complainants have not by their said bill made such a case as entitle them in a court of equity to the relief prayed for as to the matters contained in the said bill, or any of such matters, nor as entitle them to any relief in this court touching any of the matters therein complained of.

Wherefore, and for divers other errors in said bill contained and appearing on the face thereof, this defendant doth demur thereto, and humbly crave the judgment of this hon. cour twhether he is compellable or ought to make any answer thereto otherwise than as aforesaid; and this defendant humbly prays to be hence dismissed, with his costs and charges in this behalf most wrongfully sustained.

(Signed) GEO. H. GRANDJEAN.
A. H. LEONARD,
Per J. W. GURLEY,
Cl. Solicitor, &c.

George H. Grandjean, defendant, being sworn, says, that the above demurrer is not interposed for delay.

(Signed) GEO. H. GRANDJEAN.

Subscribed and sworn before me June 23d, 1881.

(Signed) T. V. COUPLAND,
Commissioner U. S. Circuit Court Eastern District of Louisiana.

26 I certify that in my opinion the foregoing demurrer is well founded in point of law, and further I certify that I am directed by the Hon. Attorney-General United States to appear for the said defendant-Grandjean, deputy surveyor of the United States, and defend the said suit.

(Signed) A. H. LEONARD,
U. S. Att'y & Solicitor for Def't.

Extract from chancery order book, June 23, 1881.

ALFRED SLIDELL ET AL.
vs.
GEO. H. GRANDJEAN. } No. 9483.

George H. Grandjean, U. S. deputy surveyor, defendant herein, by A. H. Leonard, his solicitor, has this day filed his demurrer to the complainants' bill of complaint.

Bill of revivor.—Filed December 6, 1881.

U. S. circuit court, E. dist. of La. In equity.

ALFRED SLIDELL ET ALS.
vs.
GEORGE H. GRANDJEAN.

27 To the judges of the circuit court of the United States for the 5th circuit and eastern district of Louisiana:

Your orator, Oliver Beirne, a citizen of and resident in the State of West Virginia, by this his bill of revivor humbly showeth unto your honors and the said court that heretofore, to wit, on the 8th day of June, 1881, John Burnside, since deceased, a subject of the Queen of Great Britain, but residing in the city of New Orleans and State of Louisiana, exhibited his original bill in this court against George H. Grandjean, in which said bill numerous other complainants joined, asking a decree perpetually restraining the said defendant from entering upon and surveying as public lands of the United States the lands described in said bill as the property of the said John Burnside and his cocomplainants in said bill.

That after the same proceedings had and done in said cause, but before the hearing thereon and before any decree therein, the said John Burnside departed this life, having made in the best form and mode
28 known to law his last will and testament, by which he appointed your orator the sole executor and detainer of all his real and personal estate; that said last will and testament has been duly probated by the civil district court for the parish of Orleans, State of Louisiana, a court having jurisdiction of such matters, and published as the last will and testament of deceased, and your orator, by the said court, has been duly recognized, confirmed, and qualified according to law, and that letters of executorship have issued to him accordingly, as the same will the more fully appear by a duly certified copy of said last will and testament of said probate thereof and of said letters of executorship herewith filed and presented to your honors as a part of this bill.

And your orator further sheweth that said bill having abated by the said death of the said Burnside, and your orator having succeeded to the estate and interest of said deceased in the lands in said bill
29 described as sole executor aforesaid and as universal legatee under said will, and having accepted the trusts and all benefits under the same, and being desirous to prosecute said bill to final decree:

To the end, therefore, that said defendant, George H. Grandjean, may answer the premises, and that said suit and all proceedings thereunder may stand and be revived against him in the same state and condition they were in at the time of the decease of said John Burnside,

Your orator prays that a writ of subpœna may issue, directed to said defendant, requiring him to show cause, if any he can, at a time and place therein to be named, why the said suit shall not be revived against him, and your orator be allowed to prosecute the same in the stead and for the said interest of estate of the said deceased, John Burnside.

And as in duty bound, &c., &c.

(Signed) J. L. BRADFORD,
His Solicitor.

30 Service accepted and citation waived.

(Signed) A. H. LEONARD,
U. S. Att'y.

Will and probate of will of John Burnside and letters testamentary.—Filed December 6th, 1882.

(Referred and made part of the foregoing bill of revivor.)

This, my alographic will.

(Signed) JOHN BURNSIDE.

(Written across the face:) Ne varietur.
New Orleans July 12, 1881.
(Signed) HENRY L. LAZARUS, *Judge.*

NEW ORLEANS, *April* 28, 1857.

31 [Three one dollar and one twenty five cents Louisiana law stamps affixed and cancelled.]

I, John Burnside, being of sound mind and body, but mindful of the uncertainty of life, do by this, my last will and testament, dispose of all my worldly estate, as follows:

1st. To my old friend Andrew Beirne, jr., of Monroe County, Virginia, my partner in trade for many years in Union, said county, I bequeath one hundred thousand dollars.

2nd. To my partner in trade, Nelson McStea, as a mark of my confidence and esteem, I bequeath twenty-five thousand dollars and a square of ground in the fourth district, which I purchased from Philip Rotchford. I also leave his son, John Burnside McStea, fifty thousand dollars, which sum his father, Nelson McStea, will invest for him until he is twenty-one years of age.

3d. To Jesse R. Value, my partner in trade, I bequeath ten thousand dollars, (over) (signed) J. B.

I also bequeath to his son, John Burnside Value, twenty-five thousand dollars, to be invested by his father, Jesse R. Value. until he is twenty-one years of age.

4th. To Thomas M. Cory, Ogden K. Dunning, S. K. Fawler,
32 and Charles Stuart, now in the employ of J. Burnside & Co., I

bequeath each five thousand dollars. I also bequeath to John Henry, in the employ of J. Burnside & Co., three thousand dollars; Edward Garvey and Frank R. Suzeneau, each fifteen hundred dollars.

5th. To Philip Rotchford I bequeath five thousand dollars; to his son James and daughter Mary, three thousand dollars each; to his son John Burnside Rotchford, I bequeath ten thousand dollars.

6th. To my old and valued friend, John Reid, of New York, I bequeath five thousand dollars.

7th. To the Charity Hospital, first district, I leave ten thousand dollars.

8th. To the Seamen's Home, first district, I leave five thousand dollars, (over) J. B.

9th. To the Orphan's Home Asylum, fourth district, I leave five thousand dollars.

10th. To the Protestant Male Orphan Asylum, fourth district, I leave five thousand dollars.

11th. To St. Anna's Asylum, fourth district, I leave five thousand dollars.

12th. To St. Elizabeth Asylum I leave five thousand dollars, fourth district.

33 13th. To the Camp Street Female Orphan Asylum, first district, I leave five thousand dollars.

14th. To St. Mary's Boys' Asylum, third district, I leave five thousand dollars.

15th. To John Burnside Ferguson, son of John Ferguson, now living in Dublin, Ireland, formerly in Belfast, I bequeath five thousand dollars, said sum to be invested until he is twenty-one years of age in some sound security, (over) (signed) J. B.

16th. I do nominate and appoint Oliver Beirne (my late partner in trade) my sole executor to carry this my last will into full execution; no security shall be exacted from said executor, Oliver Beirne, for the faithful discharge of the duties imposed on him by this my last will and testament.

17th. The residue of my property, of every description—say stock in trade, promissory notes, accounts, my interest in the firm of J. Burnside & Co., stocks, &c., &c., &c.—I bequeath to my executor, Oliver Beirne, subject to the payment of all my just and lawful debts and the expense incidental to my succession, as a token of my sincere regard for his

34 uniform kindness and services rendered to me in early life.

18th. At the end of twelve months after my demise my executor, Oliver Beirne, will pay the bequests herein made, or as soon thereafter as possible.

New Orleans, April 28th, 1857.

(Signed) JOHN BURNSIDE.

(Written across the face:) Ne varietur.

New Orleans, July 14, 1881.

(Signed) HENRY L. LAZARUS, *Judge.*

A true copy.

[SEAL.] (Signed) LOUIS A. RICHARDS, *D'y Clerk.*

Civil district court, division C.

SUCCESSION OF JOHN BURNSIDE. } No. 3798. July 12, 1881.

John Henry and Geo. E. Chapella, sworn and examined together:

Q. You gentlemen look at that document; is the document written, dated, and signed by John Burnside; and is it in his handwriting?

A. 1. It is, in my opinion; I have known his signature for the last ten years.

A. 2. In my opinion it is, the whole document.

Q. You have often seen him write?

A. 1. Yes.

A. 2. Often seen him write.

35 Q. Know this to be in his handwriting?

A. 1. Yes.

Q. Entirely written and dated by him?

A. Yes.

Q. (By Mr. GILMORE.) You have been his secretary?

A. Yes, sir.

Q. How long have you been his secretary, Mr. Henry?

A. 30 years.

Q. And you, Mr. Chapella?

A. 6 or 7 years.

A true copy.

[SEAL.] (Signed) LOUIS A. RICHARDS, *D'y Clerk.*

Be it remembered, that on this twelfth day of July, in the year of our Lord one thousand eight hundred and eighty-one, and the 105th of the Independence of the United States of America, upon the application of Nelson McStea, and pursuant to my decree bearing even date herewith, before me, Henry L. Lazarus, judge of the civil district court for the parish of Orleans, div. E, sitting in place of Hon. F. A. Monroe,

36 judge of said court, div. C, now absent on leave, personally came and appeared John Henry and George A. Chapella, witnesses, who being duly sworn, were by me presented with an instrument of writing, and bearing the following superscription, to wit: This is my olographic will; did declare and say that the said superscription is in the proper handwriting of the late John Burnside.

Whereupon the said instrument of writing being by me unfolded was found to contain an instrument of writing, written on four pages of a double sheet of letter paper, beginning with the following words: "This is my olographic will. John Burnside, New Orleans, April 28, 1857. I, John Burnside, being of sound mind, etc.;" and ending with the following: "Bequests herein made, or as soon thereafter as possible. New Orleans, April 28th, 1857, John Burnside," and purporting to be his olographic last will and testament, which being by me exhibited to the aforesaid witnesses, was by them recognized and declared to be entirely written, dated, and signed by the testator, the said John Burnside, which

37 they attest as having often seen him write and sign during his life-

time; and the said appearers did hereunto set their hands after due reading hereof, on the day and year first-above written.

(Signed) JOHN HENRY.
GEO. A. CHAPELLA.

Sworn to and subscribed before me this 12th day of July, 1881.

(Signed) HENRY L. LAZARUS,
Judge Civil District Court for the Parish of Orleans,
Div. E, sitting in place of Hon. F. A. Monroe,
Judge of said Court, Div. C, now absent on leave.

Whereupon I, the said judge, do hereby declare the said olographic last will and testament to be truly proved, and having read the said will in a loud and distinct voice to the aforesaid witnesses, and in the presence of Messrs. Louis A. Richards and Charles J. Theard, all present in court, and after having signed the said will ne varietur, at the beginning and end of said will, do now order the same to be deposited and recorded in
38 the office of the clerk of the civil district court for the parish of Orleans, and that the execution thereof take place according to law.

Done in the civil district court for the parish of Orleans, this 12th day of July, 1881.

Ten words erased, & forty-five words & figures interlined approved before signing.

(Signed) HENRY L. LAZARUS,
Judge of Civil District Court for the Parish of Orleans,
Div. E, sitting in place of Hon. F. A. Monroe,
Judge of said Div. C, now absent on leave.

(Signed) CHAS. J. THEARD,
LOUIS A. RICHARDS.

A true copy.
[SEAL.] (Signed) LOUIS A. RICHARDS,
D'y Cl'k.

THE STATE OF LOUISIANA.

Civil district court for the parish of Orleans, division C.

[Fifty cents Louisiana law stamp affixed & cancelled.]

To all whom these presents may come, greeting:

Whereas, Oliver Beirne, named and appointed testamentary executor of the last will and testament of John Burnside, deceased, has applied
39 to the civil district court for the parish of Orleans, by petition, praying said court to grant letters testamentary therein;

Now, know ye, that the said Oliver Beirne is hereby authorized and empowered to collect all the goods and effects which were of said John Burnside, deceased, and to make a just inventory thereof, and all other lawful acts to do and perform as testamentary executor of the said last will and testament.

Witness our hand and the seal of said court, at the city of New Orleans, this 15th day of July, in the year of our Lord one thousand eight hun-

dred and eighty-one, and the 106th of the Independence of the United States of America.

(Signed) HENRY L. LAZARUS,
Judge Civil District Court for the Parish of Orleans,
Division E, sitting in place of Hon. F. A. Monroe,
Judge of said Court, Division C, now absent on leave.

40 (Signed) LOUIS A. RICHARDS,
D'y Cl'k.

A true copy.
[SEAL.] (Signed) LOUIS A. RICHARDS,
D'y Cl'k.

Motion to strike from bill names of D. D. Withers and **C. C. Gard**anne.—*Entered & filed Dec'r 6th,* 1881.

United States circuit court, 5' circuit & E. district of Louisiana.

ALFRED SLIDELL ET ALS.
vs.
GEORGE H. GRANDJEAN. } No. 9483. In equity.

On motion of J. L. Bradford, solicitor for the complainants in the above-entitled cause, and on showing to the court that the names of David D. Withers and Charles Casimir Gardanne were inadvertantly joined in said bill as complainants therein, and that the said complainants had no interest in the lands in said bill described,

41 It is ordered that the names of said David D. Withers and Charles Casimir Gardanne be stricken from said bill as complainants therein.

Motion & order: Demurrer set down for argument.—Entered & filed Dec'r 6, 1881.

U. S. circuit court, 5th circuit and eastern district of Louisiana.

ALFRED SLIDELL ET AL.
vs.
GEORGE H. GRANDJEAN. } No. 9483. In equity.

On motion of J. L. Bradford, counsel for complainants in the above-entitled cause, it is ordered that the demurrer heretofore filed by the defendant to the bill of complaint in said cause exhibited, be set down for argument on Saturday, the 7th day of January, 1882, at 11 o'clock a. m., A. H. Leonard, here present in open court, taking notice hereof.

Demurrer called & passed.—Extract from the minutes November term, 1881.

42 NEW ORLEANS, *Saturday January,* 7, 1882.

Court met pursuant to adjournment.
Present, Hon. E. C. Billings, district judge.

ALFRED SLIDELL ET AL.
vs.
GEO. H. GRANDJEAN. } No. 9483.

The demurrer herein was called & passed.

Motion & order: Demurrer fixed for trial.—Extract from the minutes of Jan'y 21, 1882.

On motion of A. H. Leonard, U. S. attorney, it is ordered by the court that the following cause be fixed for trial on Wednesday, Feb'y 1st, 1882, viz, Alfred Slidell vs. Geo. H. Grandjean.

Hearing & continuance of demurrer.—Extract from the minutes of Feb'y 1, 1882.

ALFRED SLIDELL ET AL.
vs.
GEO. H. GRANDJEAN. } No. 9483.

43 This cause came on to be heard on the demurrer to the bill herein—J. L. Bradford, for complainants; A. H. Leonard, U. S. att'y, for def't. Whereupon, for want of time, it was ordered by the court that said demurrer be reassigned for Saturday, February 11th, at 10 o'clock a. m.

Order: Demurrer reassigned.—Extract from the minutes of Feb'y 9th, 1882.

ALFRED SLIDELL ET AL.
vs.
GEO. H. GRANDJEAN. } No. 9483.

Ordered by the court that the demurrer herein fixed for Saturday 11' inst. be reassigned for Wednesday, 8th day of March next at 11 a. m., and that complainants be notified thereof.

Motion & order: Demurrer reassigned.—Extract from the minutes of Feb'y 11, 1882.

ALFRED SLIDELL ET AL.
vs.
GEO. H. GRANDJEAN. } No. 9483.

44 Upon the motion of J. L. Bradford, solicitor for complainants, for reasons orally stated and deemed sufficient by the court, it is ordered that the demurrer herein fixed for hearing for 8th March, 1882, be reassigned for Monday, 20th inst., at 9 o'clock a. m., the U. S. attorney, here present in open court, taking notice hereof.

Order: Demurrer continued.—Extract from the minutes of Feb. 20, '82.

ALFRED SLIDELL ET AL.
vs.
GEORGE H. GRANDJEAN. } No. 9483.

Ordered by the court that the demurrer herein be continued until Wednesday, 1st March, 1882, at 11 o'clock a. m.

Hearing & continuance of demurrer.—Extract from the minutes of March 1, 1882.

ALFRED SLIDELL ET AL.
vs.
GEO. H. GRANDJEAN. } No. 9483.

45 This cause came on to be heard on the demurrer herein—J. L. Bradfor for complainants; A. H. Leonard, U. S. attorney, appearing for defendant—and after hearing argument until 3 p. m., the court continued the matter till to-morrow at 11 a. m.

Hearing & submission of demurrer.—Extract from the minutes of March 2, 1882.

ALFRED SLIDELL ET AL.
vs.
GEO. H. GRANDJEAN. } No. 9483.

This cause came on to be further heard on the demurrer, and was argued and submitted by the counsel for both parties; thereupon the court took time to consider, and granted time to the counsel for defendant to furnish his brief.

Decree sustaining demurrer and dismissing bill.—Entered & filed June 16th, 1882.

U. S. circuit court, eastern dist. of La.

ALFRED SLIDELL ET AL.
46 *vs.*
GEO. H. GRANDJEAN, DEPUTY U. S. SURVEYOR. } No. 9483.

This cause came on to be heard at this term upon bill and demurrer, and was argued by counsel and submitted to the court. On consideration whereof it is now ordered, adjudged, and decreed that the preliminary injunction herein issued be dissolved, that the demurrer be sustained, and that complainants' bill be dismissed with costs.

June 16th, 1882.

(Signed) EDWARD C. BILLINGS, *Judge.*

Motion & order for appeal.—Entered & filed June 16th, 1882.

U. S. circuit court, fifth circuit and eastern district of Louisiana.

ALFRED SLIDELL, OLIVER BEIRNE, DUNCAN F. Kenner, Nicholas H. Rightor, Robert Lawes, Marguerite Mathilde Slidell, wife of the Baron D'Erlanger, Marie Rosine Slidell, wife of
47 Count de St. Roman, Marie Marguerite Caroline Slidell, wife of Jacob Antoine de Heydegg, Henry C. Millandon, Benjamin L. Millandon, Jeanne Henriette Millandon, wife of Charles C. Gardanne, dec'd, Laurent A. Burthe, Josephine Pages, widow of Emanuel Burthe, dec'd, Thomas Burthe, tutor, &c., Genevieve Millandon, wife of George E. Brown, Louise Burthe, widow of D. F. E. Burthe, Nicholas B. Trist, Nanine Bringier, wife of Benjamin Tureaud, Louisa Bringier, wife of Martin Gordon, jr., Marius S. Bringier, Octavie Bringier, wife of Allen Thomas, M. D. Bringier, Louise Taylor, Bettie Taylor, wife of Walter Stauffer, Nicholas P. Trist, and Wilhelmine Trist, wife of Robert C. Wood,

vs.

GEORGE H. GRANDJEAN, U. S. DEPUTY SURVEYOR.

} No. 9483.

On motion of J. L. Bradford, solicitor for the complainants in the above-entitled cause, and on suggesting to the court that said complainants are aggrieved by the final decree in this cause this day rendered
48 against them, and believing that there is error therein:

It is ordered that the said complainants be, and they are hereby, allowed an appeal therefrom to the Supreme Court of the United States, returnable therein on the second Monday of October next ensuing, to operate as a supersedeas upon the complainants giving bond, with one solvent surety, in the sum of five hundred dollars, conditioned as the law directs.

Service of appeal admitted, and citation of appeal waived.

(Signed) A. H. LEONARD,
U. S. Att'y, Solicitor for Resp'd't.

Bond for appeal.—Filed June 16th, 1882.

UNITED STATES OF AMERICA:

Know all men by these presents that we, Nicholas H. Righton, as principal, and Edward T. Manning, as surety, are held and firmly bound, jointly and severally, unto George H. Grandjean, United States deputy surveyor, in the sum of five hundred dollars, lawful money
49 of the United States of America, to be paid to the said George H. Grandjean, his heirs, executors, administrators, and assigns, for

which payment well and truly to be made we bind ourselves and each of us by himself, and each of our heirs, executors, and administrators, firmly by these presents. Sealed with our seals and dated the 16th day of June, in the year of our Lord eighteen hundred and eighty-two.

Whereas the said Nicholas H. Rightor and others having heretofore, to wit, on this 16th day of June, 1882, taken an appeal to the Supreme Court of the United States from and to reverse the decree rendered on this 16th day of June, 1882, by the circuit court of the United States for the fifth circuit, holding sessions in and for the eastern district of Louisiana, in the suit of Alfred Slidell & others against George H. Grandjean, United States deputy surveyor, No. 9483 of the docket thereof:

Now, the condition of the above obligation is, that if the above-
50 bounden N. H. Rightor and his cocomplainants shall prosecute said appeal to effect, and shall answer all damages and costs if they shall fail to make good their plea, then this obligation shall be void; otherwise to remain in full force and virtue.

(Signed) N. H. RIGHTOR. [L. S.]
ED. T. MANNING. [L. S.]

Signed, sealed, and delivered in the presence of—
(Signed) WM. H. WRIGHT.
SAM'L POWERS.

UNITED STATES OF AMERICA,
Eastern District of Louisiana, ss:

Personally appeared Edward T. Manning, who, being duly sworn, deposes and says that he is the surety on the within bond, that he resides in the city of New Orleans, State of Louisiana, and is worth the full sum of five hundred dollars over and above all his debts and liabilities and property exempt from execution.

(Signed) ED. T. MANNING.

Subscribed & sworn before me this 16th day of June, 1882.
(Signed) F. A. WOOLFLEY,
Commissioner U. S. Circuit Court, Eastern District of Louisiana.

The within bond is hereby approved this 16th day of June, 1882.
(Signed) EDWARD C. BILLINGS, *Judge.*

51 UNITED STATES OF AMERICA:

Circuit court of the United States, fifth circuit and eastern district of Louisiana.

CLERK'S OFFICE.

I, Francis A. Woolfley, clerk of the circuit court of the United States for the fifth circuit and eastern district of Louisiana, do hereby certify that the foregoing 50 pages contain and form a full, complete, true, and perfect transcript of the record and proceedings had, together with all the evidence adduced on the trial of the case of Alfred Slidell et als. vs. George H. Grandjean, No. 9483 of the docket of the said court.

Witness my hand and the seal of said court, at the city of New Orleans, this 8th day of July, A. D. 1882.

Two words interlined approved.

[SEAL.] F. A. WOOLFLEY, *Clerk.*

I, Edward C. Billings, United States judge for the eastern district of Louisiana, do certify that Francis A. Woolfley, whose name is signed to the above certificate as clerk of the circuit court of the United States for the fifth circuit and eastern district of Louisiana, was, at the time of signing said certificate, and is now, the clerk of said court; that said certificate is in due form of law, and that full faith and credit are due to his official attestations as such clerk.

Given under my hand at the city of New Orleans, in said district, this 8th day of July, A. D. 1882.

Two words interlined approved.

EDWARD C. BILLINGS, *Judge.*

(Indorsement on cover :) No. 902. Alfred Slidell, Nicholas H. Rightor, et al., appellants, vs. George H. Grandjean, U. S. deputy surveyor. E. Louisiana C. C. U. S. Filed 16th August, 1882.

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